

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

MT. HAWLEY INSURANCE COMPANY,

Intervenor Plaintiff,

v.

FELMAN PRODUCTION, INC.,  
a Delaware corporation,

Plaintiff,

v.

CIVIL ACTION NO. 3:09-0481

INDUSTRIAL RISK INSURERS,  
an unincorporated association, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**


Pending before the Court is Motion of Plaintiff Felman Production, Inc. and Intervening Plaintiff Mt. Hawley Insurance Company Pursuant to Rule 41(a)(2) for Dismissal of Claims Without Prejudice. Doc. 428. As the deadline for a response has passed, this motion is now ripe for adjudication. For the following reasons, this motion is **GRANTED**.

Under Rule 41(a), a plaintiff may dismiss an action by stipulation of dismissal if agreed to by all parties who have appeared. *Fed. R. Civ. P.* 41(a)(1)(A)(ii). Defendants Industrial Risk Insurers, Westport Insurance Company, and Swiss Reinsurance America Corporation have refused to sign a stipulation agreeing to the dismissal of the claims between Mt. Hawley and Felman. *Pls.’ & Intervening Pls.’ Rule 41(a)(2) Mot. for Dismissal* 1–2. Accordingly, Plaintiff Felman and

Intervening Plaintiff Mt. Hawley have moved for dismissal pursuant to Rule 41(a)(2), which provides that a plaintiff may request dismissal by court order. *Fed. R. Civ. P.* 41(a)(2). A court may grant such a motion “on terms that [it] considers proper.” *Id.* Mt. Hawley’s First Amended Complaint sought, among other claims for relief, declaratory judgment that Felman’s claim does not implicate the Mt. Hawley Policy, and that Mt. Hawley had no coverage obligations to Felman. *See Mt. Hawley Insurance Co.’s 1st Am. Intervening Compl.*, Doc. 142. In its answer, Felman counterclaimed. *Pl.’s Answer to 1st Am. Intervening Compl.*, Doc. 163. In their motion for dismissal, these parties concluded that these claims between them “should be litigated, if ever, at a later time.” *Pls.’ & Intervening Pls.’ Rule 41(a)(2) Mot. for Dismissal* 2. The remaining defendants in this case are not implicated in any of the claims sought to be dismissed pursuant to this motion. Accordingly, this Court **FINDS** that their interests are not affected by this motion, and therefore **GRANTS** the motion for dismissal. All claims asserted by Mt. Hawley in its First Amended Complaint against Felman and Count I of Felman’s Counterclaim are hereby **DISMISSED**, without prejudice.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel of record and any unrepresented parties.

ENTER: December 14, 2010

  
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ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE